

QUESTIONNAIRE

ROMANIA

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1. Introduction

Please read carefully before answering the questionnaire

The RAYUELA project is aimed at protecting children in their online interactions. For this purpose, the project will develop a “game”, which will present the children with realistic scenarios relating to the following cybercrimes/cyber-facilitated crimes:

- **Online grooming** (further: OG) is the crime where the perpetrator (usually an adult) uses electronic communication services, including social media, to contact a minor and build rapport with the aim of eventually meeting in person for the purposes of sexual activity. The perpetrator may employ various strategies (deception, romantic/emotional attachment, promise of material or other benefits, blackmail, coercion, etc.) to lower a child's inhibitions, heighten their curiosity about sexual experiences, or otherwise convince them to meet up.
- **Cyber bullying** (further: CB) is a broad term that includes all types of bullying behaviour online. This includes cyber stalking and cyber harassment, and any other type of behaviour online aimed at hurting the victim. Cyber bullying may also have a sexual component.
- **Misinformation and deception** (further: MD) is a behaviour that may or may not be punishable by law depending on the context. It involves all kinds of information sharing that is fake, or deceptive. For a criminal qualification to apply, typically the behaviour will need to be intentional and there will need to be material consequences to this intention.
- **Human trafficking with a cyber component** (further: HT) is the online facilitation of human trafficking by grooming and attracting potential victims for human trafficking.

The purpose of the game is to teach children how to remain safe online, while the obtained insights will be used to provide policy recommendations and educational tools.

The game does not focus solely on the threats of potentially falling victim to one of these four crimes. It also aims to raise awareness about the general threats of using IT, such as the Internet and connected devices, and minors' capacity to make responsible choices in this regard.

A particular point of interest is understanding whether minors are aware of when they, or someone else, is crossing the line in becoming offenders themselves, as this is an important aspect of protecting children online. Due to the nature of online communication, inhibitions may be lowered, and certain actions may feel more innocent or less “real” than in real life. In addition, a perception may exist that what happens on the Internet has little or no impact beyond the digital world. This creates situations where minors engage in what they perceive to be relatively innocent behaviour (“everyone does this on the internet”), that may however have serious legal consequences.

One of the goals in RAYUELA is to ensure that minors realize when their behaviour may turn into actions that are punishable by law.

The present study and questionnaire are set up in the context of the RAYUELA project in order to provide an overview of the **legislative framework and relevant policies** in a number of countries, both in the EU and beyond, in relation to:

- How the main crimes of OG, CB, MD and HT are dealt with by the legal system i.e., which behaviours are punishable and under which conditions?

- How cybercrime and cyber-facilitated crime perpetrated by minors is dealt with in the legal system (both in general and specifically in relation to the crimes in focus)?
- What international instruments and cooperation mechanisms are available in dealing with cybercrime perpetrated by minors?

Importantly, we want to know both the legal rules and policies which are implemented in practice, and their effect on the **real enforcement situation**. If you have knowledge about the effects of current policies on crime rates by minors and on the crime rates for OG, CB, MD and HT, this would be of interest.

We are specifically interested in **case law** that illustrates the “why and how” of certain legal rules, principles and policies in practice. Case law will help us illustrate the similarities and differences between jurisdictions and is therefore *essential*. Please ensure to have a good amount of case law processed in your answers.

In addition, we want input on **international legal instruments and international cooperation** relevant for cybercrime, and in particular for cybercrime perpetrated by minors. What happens when cybercrimes is perpetrated in a cross-border context? What are the legal rules in place for cooperation with authorities from other countries, and how does this work out in practice (issues, problems, etc.)?

Lastly, we are interested in some **statistical information on cybercrime** in your country and cybercrime by minors specifically.

The purpose of this questionnaire is to help you provide this information for your jurisdiction.

Resources

- **Romanian Criminal Code**
Law No. 286/2009
<https://legislatie.just.ro/Public/DetaliiDocument/109855>
[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2018\)042-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2018)042-e)
- **Romanian Criminal Procedure Code**
Law No. 135/2010
<https://legislatie.just.ro/Public/DetaliiDocument/120611>
[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2018\)043-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2018)043-e)
- **Law No. 302/2004 on international judicial cooperation in criminal matters**
<https://legislatie.just.ro/Public/DetaliiDocument/53158>
<https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties.aspx?Id=1746>
- **Government Emergency Ordinance No. 103 of 13 December 2006 on the measures for facilitating the international police cooperation**
<https://legislatie.just.ro/Public/DetaliiDocument/77941>
<http://www.schengen.mai.gov.ro/English/Documente/Law/Police/GEO%20No.%20103%20.pdf>
- **Romanian Magistrates Superior Council case law portal**
<https://rejust.ro/>
- **Council of Europe Convention on Cybercrime (CETS No. 185/2001)**
<https://www.coe.int/en/web/cybercrime/the-budapest-convention>
- **Council of Europe Lanzarote Convention**
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201/2007)
<https://www.coe.int/en/web/children/lanzarote-convention>

Introduction

Romania is a Party to the Council of Europe Convention on Cybercrime (CETS No 185, Budapest Convention) and the Additional Protocol on Xenophobia and Racism Committed through Computer System (CETS No 189) and on 12 May 2022 signed the Second Additional Protocol of the Budapest Convention. On 17 May 2011, Romania became member to the Council of Europe Lanzarote Convention. The national legal framework includes all the provisions with regards to online illegal activities and child protection and is largely compliant with the international standards.

Criminal Code (CC), Art. 154: Statute of limitations for criminal liability

(1) The limitation term for criminal liability is as follows:

- a) 15 years, when the penalty provided by the law for the offense perpetrated is life imprisonment or a term of imprisonment exceeding 20 years;
- b) 10 years, when the penalty provided by the law for the offense perpetrated is a term of imprisonment exceeding 10 years, but no more than 20 years;
- c) 8 years, when the penalty provided by the law for the offense perpetrated is a term of imprisonment exceeding 5 years, but no more than 10 years;
- d) 5 years, when the penalty provided by the law for the offense perpetrated is a term of imprisonment exceeding one year, but no more than 5 years;

e) 3 years, when the penalty provided by the law for the offense perpetrated is a term of imprisonment not exceeding one year or a fine.

(2) The limitation terms stipulated under this article shall run as from the date the offense is perpetrated. In case of continuing offenses, the limitation term runs as from the date the action or inaction is ceased, in case of continuous offenses, as from the date the last action or inaction is performed, and in case of habitual offenses, as from the date the last act is performed.

2. Questions relating to OG, CB, HT and MD with minors as victims

In this section, we will ask questions to understand how to main 4 crimes in focus in RAYUELA are regulated in your jurisdiction. In this section, the focus is on adult perpetrators with victims that are minors. We are interested in both the general rules, and whether the fact that the victim is a minor has an influence on the application of the law. We are also in particular interested in your thoughts on whether the scope of the law affects the number of cases that are brought before the courts, in other words, are the current provisions sufficient to prosecute the diverse forms of crime present in reality? And are cases effectively prosecuted in practice or are there obstacles (e.g., lack of resources)?

Question 1: Is online grooming punishable by law in your country?

Answer: Online grooming is punishable by law in Romania

Applicable legal qualifications/ articles:

Art. 222 of the Criminal Code (CC), Recruitment of minors for sexual purposes

The act of an individual of age proposing to a minor who has not yet reached the age of 13 to meet for the purposes of the perpetration of one of the acts set out in Art. 220 or Art. 221, including when such proposal has been made using remote means, shall be punishable by no less than 1 month and no more than 1 year of imprisonment or by a fine.

The range and types of punishment that may be imposed:

The act shall be punishable by no less than 1 month and no more than 1 year of imprisonment or by a fine.

The prescription period:

As per Art. 154 (e) of the CC, the prescription period is 3 years, when the penalty provided by the law for the offense perpetrated is a term of imprisonment not exceeding one year or a fine.

Jurisdictional aspects in cross-border cases and applicable policy:

Title V, Art. 154 of the Law No. 302/2004 on international judicial cooperation in criminal matters, Admission and enforcement of Court Decisions, Penal Orders and Judicial Acts (in relation to other countries) is the legal framework for Romanian Authorities (Ministry of Justice and Justice Courts) to recognise and implement international Courts rulings.

The Law also contains provisions on Extradition, European Arrest Warrant, Transfer of Provisions, Mutual Assistance, Joint Investigation Teams, etc.

Government Emergency Ordinance No. 103 of 13 December 2006 on the measures for facilitating the international police cooperation provides the legislative and institutional internal framework regarding the operational police cooperation on data and information exchange with similar foreign authorities as well as with the international organizations or institutions.

Please provide case law to illustrate the application of the rules in practice.

<http://infodosar.ro/speta.php?id=30074>

<https://www.avocatura.com/speta/314175/racolare-minorilor-in-scopuri-sexuale-art222-ncp-curtea-de-apel-oradea.html>

<http://infodosar.ro/speta.php?id=30074>

Please provide details on known issues of application

The existing legislation largely covers the online grooming situations; the investigations are conducted by prosecutors of the dedicated Cybercrime Office and police officers of the Cybercrime Departments in Organised Crime Unit.

Question 2: Is cyberbullying punishable by law in your country? Please take into account a broad understanding of cyberbullying (cyber/online stalking, harassment, sexual harassment)?

Answer: Cyberbullying *per se* is not punishable by law in Romania, although, Art. 208 of the CC criminalizes

Harassment:

(1) The act of an individual who repeatedly, with or without a legitimate interest, pursues an individual or supervises his/her domicile, working place or other places attended by the latter, thus causing to him/her a state of fear, shall be punishable by no less than 3 and no more than 6 months of imprisonment.

(2) Making of phone calls or communications through remote communication devices which, through their frequency or content, cause a state of fear to an individual, shall be punishable by no less than 1 and no more than 3 months of imprisonment or by a fine, unless such act represents a more serious offense. (3) A criminal action shall be initiated based on a prior complaint filed by the aggrieved party.

The range and types of punishment that may be imposed:

Harassment shall be punishable by no less than 1 and no more than 3 months of imprisonment or by a fine, unless such act represents a more serious offense.

The prescription period:

As per Art. 154 (e) of the CC, the prescription period is 3 years, when the penalty provided by the law for the offense perpetrated is a term of imprisonment not exceeding one year or a fine.

As per Art. 131 of the CC, in case of persons who are underage at the date the offense is perpetrated, the criminal liability limitation terms provided under Art. 154 shall be reduced to half and shall be postponed or suspended as provided by law for persons of age.

Jurisdictional aspects in cross-border cases and applicable policy:

Law No. 302/2004 on international judicial cooperation in criminal matters, Title V, Art. 154 and Government Emergency Ordinance No. 103 of 13 December 2006 on the measures for facilitating the international police cooperation.

Please provide case law to illustrate the application of the rules in practice.

<https://vedemjust.ro/hartuire-online/>

Operation **DOLLS** - Targeted against a repeat online child offender, suspected for child sexual harassment, online child sexual grooming, production and distribution of Child Sexual Exploitation Material, who was arrested in October 2020. This case was used in EUROPOL study on “childlike sex dolls phenomenon”, which will be publicly available. <https://www.digi24.ro/stiri/actualitate/justitie/unbarbat-acuzat-ca-racola-fetite-pe-internet-mintind-ca-e-de-varsta-lor-arestat-1380526>

Please provide details on known issues of application.

The first conviction for online harassment in Romania was issued in 2022 ~~2002~~.

<https://www.digi24.ro/stiri/actualitate/prima-condamnare-pentru-hartuire-online-in-romania-o-femeie-a-fost-amendata-dupa-ce-i-a-trimis-unui-preot-mii-de-mesaje-si-fotografii-1831379>

<https://www.juridice.ro/768929/curtea-de-apel-oradea-condamnare-pentru-hartuire-online.html>

Question 3: When would misinformation and deception online constitute a criminal offence in your country? In other words, what potential qualifications could apply to wilful misinformation and deception on the internet?

Answer: Art. 244 of the CC, criminalizes Deceit:

(1) Misleading another by presenting false facts as being true, or of true facts as being false, in order to obtain undue material gains for oneself or for another, and if material damages have been caused, shall be punishable by no less than 6 months and no more than 3 years of imprisonment.

(2) Deceit perpetrated by using false names or capacities or other fraudulent means shall be punishable by no less than 1 and no more than 5 years of imprisonment. If the fraudulent mean is in itself a offense, the rules for concurrence of offenses shall apply.

(3) Reconciliation removes criminal liability.

The range and types of punishment that may be imposed:

1. As per para 1 of the Art. 244 of the CC, the act , shall be punishable by no less than 6 months and no more than 3 years of imprisonment.
2. As per para 2 of the Art. 244 of the CC, the act shall be punishable by no less than 1 and no more than 5 years of imprisonment.

The prescription period:

1. As per Art. 154 (e) of the CC, the prescription period is 3 years, when the penalty provided by the law for the offense perpetrated is a term of imprisonment not exceeding one year or a fine. As per Art. 131 of the CC, in case of persons who are underage at the date the offense is perpetrated, the criminal liability limitation terms provided under Art. 154 shall be reduced to half and shall be postponed or suspended as provided by law for persons of age.
2. As per Art. 154 (d) of the CC, the prescription period is 5 years, when the penalty provided by the law for the offense perpetrated is a term of imprisonment exceeding one year, but no more than 5 years. As per Art. 131 of the CC, in case of persons who are underage at the date the offense is perpetrated, the criminal liability limitation terms provided under Art. 154 shall be reduced to half and shall be postponed or suspended as provided by law for persons of age.

Jurisdictional aspects in cross-border cases and applicable policy:

Law No. 302/2004 on international judicial cooperation in criminal matters, Title V, Art. 154 and Government Emergency Ordinance No. 103 of 13 December 2006 on the measures for facilitating the international police cooperation.

Please provide case law to illustrate the application of the rules in practice.

<https://www.legi-internet.ro/jurisprudenta-it-romania/decizii-it/inselaciune-licitatii-frauduloase-pe-internet-jurisprudenta-romaneasca.html>
<https://legislatie.just.ro/Public/DetaliiDocumentAfis/244415>

Please provide details on known issues of application.

Online deceit is widely investigated and convicted in Romania.

Answer: As per Art. 249 of the CC, computer fraud is punishable in Romania

Computer fraud

Entering, altering or deleting computer data, restricting access to such data or hindering in any way the operation of a computer system in order to obtain a benefit for oneself or another, if it has caused damage to a person, shall be punishable by no less than 2 and no more than 7 years of imprisonment.

The range and types of punishment that may be imposed:

Is punishable by no less than 2 and no more than 7 years of imprisonment.

The prescription period:

As per Art. 154 (c) of the CC, the prescription period is 8 years, when the penalty provided by the law for the offense perpetrated is a term of imprisonment exceeding 5 years, but no more than 10 years. As per Art. 131 of the CC, in case of persons who are underage at the date the offense is perpetrated, the criminal liability limitation terms provided under Art. 154 shall be reduced to half and shall be postponed or suspended as provided by law for persons of age.

Jurisdictional aspects in cross-border cases and applicable policy:

Law No. 302/2004 on international judicial cooperation in criminal matters, Title V, Art. 154 and Government Emergency Ordinance No. 103 of 13 December 2006 on the measures for facilitating the international police cooperation.

Please provide case law to illustrate the application of the rules in practice.

<https://legislatie.just.ro/Public/DetaliiDocumentAfis/244415>

<https://www.iccj.ro/2021/07/19/decizia-nr-37-din-7-iunie-2021/>

Please provide details on known issues of application.

Computer fraud is widely investigated and convicted in Romania.

Operation **RESIDENT**

Supported by Europol and Eurojust, the investigation uncovered a criminal group composed of nationals from different African countries residing in Europe. They developed a Covid-19 business email compromise fraud scheme, causing companies in at least 20 countries approximately €3 million financial loss. <https://www.europol.europa.eu/newsroom/news/unmasked-23-charged-over-covid-19-business-email-compromise-fraud>

Operation **BRUNO**

Supported by Europol and Eurojust (*Joint Investigation Team*), a two-year long cybercrime investigation between Romanian and Italian Police has led to the arrest of 20 suspects, linked to 'Ndrangheta, in a series of 45 coordinated raids, in Romania and Italy, on 28 March 2018.

<https://www.europol.europa.eu/newsroom/news/20-hackers-arrested-in-eur-1-million-banking-phishing-scam>

Operation **JAPAN**

On 26 April 2015, the operation led to 13 arrests, after 42 coordinated raids in Romania. The suspects had stolen 13.8 million €, by hacking the computer systems of 2 banks in Puerto Rico and Oman and used cloned cards to withdraw money in Romania and Japan.

<http://www.techworm.net/2015/05/cybergang-that-was-behind-the-15-million-bank-robbery-has-been-arrested-by-the-roman-authorities.html>

Question 4: What constitutes human trafficking and how is human trafficking facilitated by electronic means punished in your country? Are online grooming activities to find victims (e.g. lover boys) before the actual human trafficking punishable in itself? In addition, are these activities punishable as a separate crime if human trafficking does take place afterward?

Answer: As per Art. 210 of the CC, human trafficking is punishable by law in Romania

Trafficking in human beings

- (1) Recruitment, transportation, transfer, harbouring or receipt of persons for exploitation purposes:
 - a) by means of coercion, abduction, deception, or abuse of power;
 - b) by taking advantage of the inability of a person to defend him/herself or to express his/her will or of his/her blatant state of vulnerability;
 - c) by giving and receiving payments or other benefits in exchange for the consent of an individual having authority over such person, shall be punishable by no less than 3 and no more than 10 years of imprisonment and a ban on the exercise of certain rights.
- (2) Trafficking in persons perpetrated by a public servant while fulfilling his/her professional duties and prerogatives shall be punishable by no less than 5 and no more than 12 years of imprisonment.
- (3) The consent of an individual who is a victim of trafficking does not represent a justifying ground.

The range and types of punishment that may be imposed:

1. As per Art. 210, para 1 (c) the act shall be punishable by no less than 3 and no more than 10 years of imprisonment and a ban on the exercise of certain rights
2. As per Art. 210, para 2, the act shall be punishable by no less than 5 and no more than 12 years of imprisonment.

The prescription period:

1. As per Art. 154 (c) of the CC, the prescription period is 8 years, when the penalty provided by the law for the offense perpetrated is a term of imprisonment exceeding 5 years, but no more than 10 years; As per Art. 131 of the CC, in case of persons who are underage at the date the offense is perpetrated, the criminal liability limitation terms provided under Art. 154 shall be reduced to half and shall be postponed or suspended as provided by law for persons of age.
2. As per Art. 154 (b) of the CC, the prescription period is 10 years, when the penalty provided by the law for the offense perpetrated is a term of imprisonment exceeding 10 years, but no more than 20 years; As per Art. 131 of the CC, in case of persons who are underage at the date the offense is perpetrated, the criminal liability limitation terms provided under Art. 154 shall be reduced to half and shall be postponed or suspended as provided by law for persons of age.

Jurisdictional aspects in cross-border cases and applicable policy:

Law No. 302/2004 on international judicial cooperation in criminal matters, Title V, Art. 154 and Government Emergency Ordinance No. 103 of 13 December 2006 on the measures for facilitating the international police cooperation.

Please provide case law to illustrate the application of the rules in practice.

<http://infodosar.ro/speta.php?id=59962>

<http://infodosar.ro/speta.php?id=22016>

Please provide details on known issues of application.

Trafficking in human beings is widely investigated and convicted in Romania.

<https://www.politiaromana.ro/ro/stiri-si-media/comunicate/operatiune-comuna-pentru-combaterea-traficului-de-persoane>

<https://www.mai.gov.ro/combaterea-traficului-de-persoane-prioritate-a-autoritatilor-romane/>

Answer: As per Art. 211 of the CC, Trafficking in underage persons is punishable by law in Romania

Trafficking in underage persons

1. (1) *Recruitment, transportation, transfer, harboring or receipt of a minor for the purpose of his/her exploitation shall be punishable by no less than 3 and no more than 10 years of imprisonment and a ban on the exercise of certain rights.*

2. *The penalty is higher when:*

a) *the deed was committed under the conditions of art. 210 para. (1);*

b) *if perpetrated by a public servant while fulfilling his/her professional duties and prerogatives, it shall be punishable by no less than 5 and no more than 12 years of imprisonment and a ban on the exercise of certain rights.*

c) *the act endangered the life of the minor;*

d) *the deed was committed by a family member of the minor;*

e) *the act was committed by a person in whose care, protection, education, guarding or treatment the minor was or by a person who abused his position of trust or authority over the minor.*

3) *The consent of an individual who is a victim of trafficking does not represent a justifying ground.*

The range and types of punishment that may be imposed:

1. As per Art. 211, para 1, the act shall be punishable by no less than 3 and no more than 10 years of imprisonment and a ban on the exercise of certain rights.
2. As per Art. 211, para 2 (b) the act shall be punishable by no less than 5 and no more than 12 years of imprisonment and a ban on the exercise of certain rights.

The prescription period:

1. As per Art. 154 (c) of the CC, the prescription period is 8 years, when the penalty provided by the law for the offense perpetrated is a term of imprisonment exceeding 5 years, but no more than 10 years; As per Art. 131 of the CC, in case of persons who are underage at the date the offense is perpetrated, the criminal liability limitation terms provided under Art. 154 shall be reduced to half and shall be postponed or suspended as provided by law for persons of age.
2. As per Art. 154 (b) of the CC, the prescription period is 10 years, when the penalty provided by the law for the offense perpetrated is a term of imprisonment exceeding 10 years, but no more than 20 years; As per Art. 131 of the CC, in case of persons who are underage at the date the

offense is perpetrated, the criminal liability limitation terms provided under Art. 154 shall be reduced to half and shall be postponed or suspended as provided by law for persons of age.

Jurisdictional aspects in cross-border cases and applicable policy:

Law No. 302/2004 on international judicial cooperation in criminal matters, Title V, Art. 154 and Government Emergency Ordinance No. 103 of 13 December 2006 on the measures for facilitating the international police cooperation.

Please provide case law to illustrate the application of the rules in practice.

<https://www.jurisprudenta.com/jurisprudenta/speta-vvo3ysf/>

<https://legislatie.just.ro/Public/DetaliiDocument/228499>

Please provide details on known issues of application.

Trafficking in underage persons ~~Trafficking in minors~~ is widely investigated and convicted in Romania.

<https://www.politiaromana.ro/ro/stiri-si-media/stiri/perchezitii-la-persoane-banuite-de-trafic-de-minori1649770520>

<https://www.diicot.ro/mass-media/comunicate>

3. Questions regarding cybercrime or cyber-facilitated crime committed by minors

This section is aimed at understanding how cybercrime or cyber-facilitated crime committed by minors is dealt with in your jurisdiction. In particular, we are trying to assess to what extent the rules and policies in place create leeway for minors who may not always be aware of when their behaviour is crossing a line. We are also interested to know the real enforcement situation. In addition to the general rules on the juvenile justice system and the punishment of minors, the 4 crimes of focus of RAYUELA are addressed, as well as two particularly relevant crimes committed by minors online: online piracy and hacking.

Question 5: How is crime committed by minors dealt with in your country, in general? Is there a specific juvenile justice system? If yes, please explain in detail how this works.

Answer: Crime committed by minors is punishable by law in Romania and there a specific juvenile justice system. Title V of the Criminal Code provides for dedicate provisions for juvenile offenders, such as regime of criminal liability of the minor, regime of non-custodial educational measures, regime of custodial educational measures with depriving of liberty, as well as common provisions.

Minors who commit criminal offenses have a special regime in terms of the provisions of criminal law. Although they may have a physical and intellectual capacity that allows them to commit acts provided by criminal law, they do not always act with discernment.

According to the definition in the Romanian language dictionary, "discernment" is "the faculty to discern, to penetrate, to judge and to appreciate things at their fair value." Also, according to the Civil Code, from the interpretation of art. 1205, discernment is understood to be a state that makes a certain person unable to realize the consequences of his deed.

It is understandable that people up to the age of 18 do not have discernment or have a discernment in training, more precisely they are in a mental state that does not allow them to be aware of the consequences of their actions or can only realize the consequences of certain facts. given certain circumstances.

From a psychological point of view, it is natural that until the age of 18 discernment is vitiated by the young age which implies either a lack of complete development from a psychological and moral point of view, or a clear lack of life experience. To these are added, depending on the particular situation of each person, the way of life he had during his childhood and the events he went through and which influenced him positively or negatively.

The framework of criminal liability of persons under the age of 18 is established, with an absolute presumption of lack of discernment for minors under the age of 14, a relative presumption of lack of discernment regarding minors between the ages of 14 and 16, which may be overturned by evidence.

One of the conditions for the criminal prosecution of minors who have committed acts provided by the criminal law is the preparation of a report on the evaluation of the minor by the probation service.

This report has the role of helping the court in choosing the educational measures in the situation in which it will consider that the minor is criminally liable. According to art.116, para. 1 of the Criminal Code, *"the report also includes reasoned proposals regarding the nature and duration of the social reintegration programs that the minor should follow, as well as other obligations that may be imposed on him by the court."*

The Criminal Code regulates the system of sanctioning minors, being made up of educational measures that can be deprived or non-deprived of liberty. These remain at the discretion of the court in the situation of fulfilling certain conditions.

In principle, in the case of a minor between the ages of 14 and 18, a non-custodial educational measure is taken.

When can a minor be deprived of liberty?

- When he/she committed another crime, for which an educational measure was applied to him/her which was executed or the execution of which had begun before the commission of the crime for which he/she is tried;
- When the punishment provided by law for the crime committed is imprisonment of 7 years or more or life imprisonment.

The Criminal Code covers only one situation when the court is obliged to apply an educational measure in the form of depriving of liberty. More precisely, when the minor does not comply with the conditions of execution of a non-custodial educational measure

The Juvenile and Family Tribunal was established by Order of Minister of Justice no. 3142/C/22 November 2004 and became operational on the same date.

The jurisdiction of the specialized court includes both **criminal cases** – in which at least one of the defendants or one of the injured person/civil parties are minors (with reference to preventive measures, precautionary and security measures, judgments on the execution of criminal judgments or of rehabilitation), as well as **civil cases** – in the first instance (disputes regarding placements and adoptions), on appeal and in appeal (in the matter of minors and family pronounced by the courts within its territorial jurisdiction).

Title V of the CC, Underage offenders

Chapter I Rules on criminal liability of an underage offender

Article 113

Criminal liability limits:

- (1) A juvenile who has not reached **the age of 14** is not held criminally liable.
- (2) A juvenile who is **between 14 and 16 years old** shall be held criminally liable if it is proven that he/she perpetrated the act with discernment.
- (3) A juvenile who reached the **age of 16** is held criminally liable according to law.

Article 114

Consequences of criminal liability

- (1) A juvenile who, at the time of the offence, is between 14 and the age of 18, shall be subject to a non-custodial educational measure.
- (2) The juvenile referred to in par. (1) may be subject to educational measures by imprisonment in the following cases:

- a) if the juvenile perpetrated another offense for which an educational measure was taken and served or the execution of which started before the perpetration of the offence for which the juvenile is subject to trial;
- b) when the penalty prescribed by law for the perpetrated offence is a term of imprisonment of seven years or more or life imprisonment

Article 115

Educational measures

(1) Educational measures are without or by imprisonment.

1. The educational measures without imprisonment are:

- a) civic traineeship;
- b) supervision;
- c) curfew on weekend;
- d) assistance on a daily basis.

2. The educational measures by imprisonment are:

- a) confinement in an educational centre;
- b) confinement in a detention centre.

(2) The educational measures to be taken against a juvenile shall be chosen in terms of Art. 114, according to the criteria stipulated in Art. 74.

Article 116

Assessment report

(1) For the purpose of assessing a juvenile, according to the criteria laid down in Art. 74, the court shall require the probation service to draft a report including also justified proposals on the nature and duration of social reintegration programs that the juvenile should follow, as well as any other duties imposed on a juvenile by the court.

(2) The compliance assessment report or the enforcement of educational measures and imposed obligations shall be prepared by the probation service in all cases in which the court orders the educational measure or the change or cessation of fulfillment of the imposed obligations, except as provided in Art. 126, when such report shall be drafted by the educational or detention centre.

Chapter II The regime of non-custodial educational measures

Article 117

Civic traineeship

(1) The educational measure of civic traineeship consists of a juvenile's obligation to participate in a program not exceeding 4 months, which would help him/her understand the legal and social consequences he/she exposes to when perpetrating offences and would make him/her accountable for his/her future behaviour.

(2) The probation service shall coordinate the organization, the juvenile's participation and the supervision during such civic traineeship, without affecting the juvenile's school or vocational program.

Article 118

Supervision

The educational measure of supervision consists of controlling and guiding a juvenile throughout his/her daily program, for a time period between two and six months, under the supervision of the probation service, in order to ensure his/her participation in school or vocational courses and to prevent him/her from carrying out certain activities or from contacting certain persons that might affect his/her reformation process.

Article 119

Curfew on weekend

(1) The educational measure of curfew on weekend consists of a juvenile's obligation not to leave his/her domicile on Saturdays and Sundays, for a time period between 4 and 12 weeks, unless, in this period, he/she is required to participate in certain programs or to carry out certain activities imposed by the court.

(2) Supervision is performed under the coordination of the probation service

Article 120

Assistance on a daily basis

(1) The educational measure of assistance on a daily basis consists of a juvenile's obligation to follow a schedule set by the probation service, which contains the timetable and conditions for conducting activities as well as the prohibitions imposed on the juvenile.

(2) The educational measure of assistance on a daily basis is enforced for a period between 3 and 6 months and supervision is performed under the coordination of the probation service.

Article 121

Obligations imposed on a juvenile

(1) During the execution of educational measures without imprisonment, the court may impose on a juvenile one or more of the following obligations:

a) to attend an educational or vocational training course;

b) not to cross the territorial limit set by the court, without the probation service approval;

c) not to be in certain places or at certain sporting cultural events or other public meetings indicated by the court;

d) to stay away from and not communicate with the victim or members of his/her family, the participants in the offence or other persons indicated by the court;

e) to report to the probation service on the set dates;

f) to observe the medical control, treatment or care measures.

(2) In determining the obligation set forth by par.(1) item d), the court practically individualizes the content of such obligation, considering the circumstances of the case.

(3) Supervision of fulfilment of the obligations imposed by the court is performed under the coordination of the probation service.

(4) During the execution of an educational measure without imprisonment, the probation service has to notify the court if:

a) reasons justifying either the change of the obligations imposed by the court or cessation of some of them appeared;

b) a supervised person violates the conditions of the educational measure's execution or fails to fulfil the obligations incumbent upon him/her, under the established terms.

Article 122

Change or cessation of obligations

(1) If during the supervision term reasons justifying either the imposition of new obligations or the extension or reduction of the execution conditions for those existing appeared, the court orders the change of obligations accordingly so as to ensure better chances for the supervised person to reform.

(2) The court orders suspension of the service of the obligations imposed by it when it deems that their maintaining is no longer required.

Article 123

Extension or replacement of educational measures without imprisonment

(1) If a juvenile does not comply, in bad faith, with the educational measure's conditions or with the obligations imposed, the court rules upon:

a) extension of the educational measure, without exceeding the maximum term provided by law for it;

b) replacement of the taken measure with another, more severe, educational measures without imprisonment;

- c) replacement of the enforced measure with confinement in an educational centre, in case that the most severe educational measure without imprisonment of maximum duration was taken initially.
- (2) In the cases referred to in par. (1) items a) and b), if the conditions for the service of the educational measure or obligations imposed are not observed this time either, the court replaces the educational measure without imprisonment with the measure of confinement in an educational centre.
- (3) If a juvenile executing educational measures without imprisonment perpetrates a new offense or is subject to trial for a concurrent offence perpetrated previously, the court rules upon:
- a) extension of the educational measure, without exceeding the maximum term provided by law for it;
 - b) replacement of the initially taken measure with another, more severe, educational measure without imprisonment;
 - c) replacement of the initially taken measure with an educational measure by imprisonment.
- (4) In the cases referred to in par. (1) items a) and b), as well as in par. (3) items a) and b), the court may impose new obligations on a juvenile or may extend the execution conditions of the existing ones.

Chapter III Rules on educational measures by imprisonment

Article 124

Internment in educational centers

- (1) The educational measure represented by the internment in educational centers consists of the internment of underage offenders in institutions specialized in the recovery of underage offenders, where the latter attend educational and professional training programs in accordance to their skills, as well as social reintegration programs.
- (2) Internment in educational centers is ordered for a time period between one and three years.
- (3) If, during the internment period, an underage offender perpetrates a new offense or is tried for a previously perpetrated concurrent offense, the court may sustain the measure of internment in an educational center, extending the duration of such measure without exceeding the maximum duration provided by law, or may replace it with the measure of internment in a detention center.
- (4) If, during the internment period, an underage offender proves a continuous interest in acquiring knowledge and professional training, and shows obvious progress in view of social reintegration, following execution of at least half of the internment period, the court may order as follows:
- a) replacement of the internment by the educational measure of daily assistance for a period equal to the duration of the internment still to be served, but no more than six months, if the person admitted to a medical facility has not reached the age of 18;
 - b) release from the educational center, if the person admitted to a medical facility has reached the age of 18.
- (5) Simultaneously with such replacement or release, the court shall order the observance of one or several obligations provided under Art. 121, until reaching the duration of internment.
- (6) If an underage offender, in bad faith, does not observe the conditions for the service of the measure of daily assistance or the obligations ordered, the court shall reconsider the replacement or release, and shall order execution of the remaining measure of internment in an educational center.
- (7) If, until the completion of the internment period, the person not having reached the age of 18, with respect to whom the measure of internment in an educational center was replaced by the measure of daily assistance, perpetrates a new offense, the court shall reconsider the replacement and shall order as follows:
- a) execution of the remaining initial internment measure, with a possibility of extension until reaching the maximum provided by law;
 - b) internment in a detention center.

Article 125

Internment in detention centers

- (1) The educational measure of internment in detention centers consists of the internment of an underage offender in an institution specialized in the recovery of underage persons, under supervision and monitoring, while attending intensive social reintegration programs, as well as educational and professional training programs tailored according to his/her skills.

(2) Internment is ordered for a time period between 2 to 5 years, except for the case when the penalty provided by law for the perpetrated offense is a term of imprisonment of 20 years or more, or life imprisonment, in which case internment is ordered for five to 15 years.

(3) If, during the internment period, an underage offender perpetrates a new offense or is tried for a previously perpetrated concurrent offense, the court shall extend the measure of internment, without exceeding the maximum provided under par. (2), established considering the most serious penalty provided by law for the perpetrated offenses. The measure of internment served until the date of the court order shall be deducted from the educational measure.

(4) If, during the internment period, an underage offender proves a continuous interest in acquiring knowledge and professional training, and shows obvious progress in view of social reintegration, following the execution of at least half of the internment period, the court may order as follows:

a) replacement of the internment with the educational measure of daily assistance for a period equal to the duration of the internment still to be served, but no more than six months, if the person admitted to a medical facility has not reached the age of 18;

b) the release from the detention center, if the person admitted to a medical facility has reached the age of 18.

(5) Concomitant with the replacement or release, the court shall order the observance of one or several obligations provided under Art. 121, until reaching the duration of internment.

(6) If an underage offender, in bad faith, does not observe the conditions for execution of the measure of daily assistance or the obligations ordered, the court shall reconsider the replacement or release, and shall order execution of the remaining measure of internment in a detention center.

(7) If, until completion of the internment period, a person not having reached the age of 18, in whose respect a measure of internment in a detention center was replaced by a measure of daily assistance, perpetrates a new offense, the court shall reconsider the replacement and shall order as follows:

a) execution of the remaining initial internment measure in a detention center;

b) extension of such internment as provided under par. (3).

Article 126

Replacement of the penalty service regime

If, during the service of an educational measure by imprisonment, a person admitted to a medical facility, having reached the age of 18, shows a behaviour having a negative impact on or preventing the recovery or reintegration of other persons admitted to a medical facility, the court may order the service of the educational measure in prison.

Article 127

Computing the term of educational measures

With regard to the educational measures by imprisonment, the stipulations under Art. 71 - 73 shall apply accordingly.

Chapter IV Common stipulations

Article 128

Effects of mitigating and aggravating circumstances

With respect to offenses perpetrated while underage, mitigating and aggravating circumstances are considered when ordering an educational measure and these are effective within the limits provided by law for each educational measure.

Article 129

Plurality of offenses

(1) In case of multiple offenses perpetrated while underage, a single educational measure is ordered for all acts, as per Art. 114, by observing the criteria under Art. 74.

(2) In case of two offenses, one of which is perpetrated while underage and the other one after having reached the age of 18, an educational measure shall be ordered for the offense perpetrated while underage and a penalty shall be ordered for the offense perpetrated after having reached the age of 18, and:

- a) in case of educational measures without imprisonment, only the penalty shall be served;
 - b) in case of educational measures by imprisonment, if the penalty is imprisonment, the imprisonment shall apply and shall be extended by at least one fourth of the duration of the educational measure or of the remaining educational measure still to be served at the date of the offense perpetrated after having reached the age of 18;
 - c) if the penalty ordered for a offense perpetrated after having reached the age of 18 is life imprisonment, only this penalty shall be served;
 - d) in case of educational measures by imprisonment, if the penalty consists of a fine, the educational measure shall be served, and its duration shall be extended by no more than six months, by observing the maximum term provided by law for such measure.
- (3) With regard to the case provided under par. (2) let. b), the penalty served between the date of the offense perpetrated after having reached the age of 18 and the trial date shall be deducted from the ordered sentence.
- (4) In case two or more concurrent offenses are perpetrated after having reached the age of 18, the rules on multiple offences shall apply first and then the stipulations under par. (2) shall be applied.
- (5) The penalty ordered pursuant to the stipulations under par. (2) let. b) may not be subject to enforcement postponement or to suspension of service of a sentence under supervision.

Article 130

Discovery of an offense perpetrated while underage

If, during the supervision period for the postponement of a sentence enforcement, under suspension of service of a penalty under supervision or during the probation period, it is discovered that a person under supervision perpetrated another offense while underage, for which an educational measure by imprisonment is ordered even after the expiry of such period, the postponement, suspension or probation shall be overturned and the stipulations under Art. 129 par. (2) - (4) shall apply accordingly.

Article 131

Limitation of criminal liability of underage offenders

In case of persons who are underage at the date the offense is perpetrated, the criminal liability limitation terms provided under Art. 154 shall be reduced to half and shall be postponed or suspended as provided by law for persons of age.

Article 132

Statute of limitations for educational measures

- (1) Educational measures without imprisonment shall have a limitation term of two years, which runs from the date the conviction sentence ordering them is final.
- (2) Educational measures by imprisonment shall have a limitation term equal to the duration of the relevant educational measure, but no less than two years.
- (3) The limitation term of educational measures shall be interrupted and suspended as provided by law for persons of age.
- (4) In case of replacement of educational measures, execution is limited to the limitation term of the most serious educational measure and runs from the date the conviction sentence ordering them is final.

Article 133

Effects of educational measures

Educational measures do not entail prohibitions, loss of rights or incapacities.

Article 134

Underage offenders coming of age

- (1) The stipulations under this title shall also apply to offenders of age who, at the date the offense is perpetrated, were between 14 and 18 years old.
- (2) If an offender turned 18 at the date the decision ordering an educational measure by imprisonment is ruled, the court, considering the possibility of rehabilitation of such offender, as well as the other criteria provided under Art. 74, may order execution of the educational measure in prison.

Please provide case law to illustrate the application of the rules in practice.

https://portal.just.ro/1372/SitePages/jurisprudenta.aspx?id_inst=1372

<https://portal.just.ro/1372/Lists/Jurisprudenta/DispForm.aspx?ID=6&ContentTypeId=0x010017854362C029DA4EB7A0C1650A0C0651>

<https://portal.just.ro/1372/Lists/Jurisprudenta/DispForm.aspx?ID=14&ContentTypeId=0x010017854362C029DA4EB7A0C1650A0C0651>

Please provide details on known issues of application.

- Alternatives to detention for juvenile offenders: Conditional release, community service and fines
- Educational measures and mentoring
- Assistance-based measures and therapeutic measures
- Alternative measures based on providing assistance and following the needs of children
- Restorative approaches

Question 6: Are there specific rules or is there a specific policy that deals with cybercrime by minors as a special topic, acknowledging the special characteristics of crime by minors in the cyber environment, and the fact that minors may not knowingly or intentionally break rules (issues with criminal intent)? Even absent a written policy, are minors prosecuted for cybercrime in practice?

Answer: There are no specific rules/policies addressing cybercrime incidents/offences committed by minors as a particular topic. Art. 113 CC stipulates:

*(1) A juvenile who has not reached the **age of 14** is not held criminally liable.*

*(2) A juvenile who is **between 14 and 16 years old** shall be held criminally liable if it is proven that he/she perpetrated the act with discernment.*

*(3) A juvenile who **reached the age of 16** is held criminally liable according to law.*

However, the majority of cybercrime offences criminalized by Romanian legislation, if accompanied by elements such as “intent” or “without right”, will substantially narrow down the numbers of juvenile offenders.

Question 7: Can minors be punished for online grooming in your country? I.e. the situation of a minor capable of providing sexual consent (e.g. 17 year-old) grooming a minor who has not reached the age of sexual consent (e.g. 13 years old) to meet up with the intent to perform sexual activities? Please focus not only on the specific crime of online grooming (which, if present as a separate crime in your jurisdiction, often requires an adult perpetrator), but also on other crimes that would punish the activities that constitute online grooming (i.e. the use of different strategies to force a meeting with the minor victim with the intent to perform sexual activities). If criminal sanctions could apply, are minors prosecuted in practice?

Answer: In Romania, minors can't be arrested/imprisoned for online grooming. As per Art. 222 of the CC, Recruitment of minors for sexual purposes, only individual of age are criminalized for such offence. *The act of an individual of age proposing to a minor who has not yet reached the age of 13 to meet for the purposes of the perpetration of one of the acts set out in Art. 220 or Art. 221, including when such proposal has been made using remote means, shall be punishable by no less than 1 month and no more than 1 year of imprisonment or by a fine.*

The range and types of punishment that may be imposed:

The Criminal Code regulates the system of sanctioning minors, being made up of educational measures that can be deprived or non-deprived of liberty. These remain at the discretion of the court in the situation of fulfilling certain conditions.

Article 115

Educational measures

(1) Educational measures are without or by imprisonment.

1. The educational measures without imprisonment are:

- a) civic traineeship;
- b) supervision;
- c) curfew on weekend;
- d) assistance on a daily basis.

2. The educational measures by imprisonment are:

- a) confinement in an educational centre;
- b) confinement in a detention centre.

(2) The educational measures to be taken against a juvenile shall be chosen in terms of Art. 114, according to the criteria stipulated in Art. 74.

The prescription period

As per Art. 131 of the CC, in case of persons who are underage at the date the offense is perpetrated, the criminal liability limitation terms provided under Art. 154 shall be reduced to half and shall be postponed or suspended as provided by law for persons of age.

Question 8: Can minors be punished for purely online behaviour with a sexual intent when other minors are the victim? E.g. the situation where a minor perpetrator obtains sexually explicit material from the minor victim in order to sell this or to force the victim to do something. If criminal sanctions could apply, are minors prosecuted in practice?

Answer:

Yes, a minor who obtains sexually explicit material from the minor victim in order to sell this or to force the victim to do something is punishable according to Romanian legislation for the offence of child pornography.

Article 374

Child pornography

(1) The production, possession for display or distribution, the purchase, storage, display, promotion, distribution and provision, in any manner, of child pornography shall be punishable by no less than 1 and no more than 5 years of imprisonment.

(1 ^ 1) With the punishment provided in par. (1) the incitement or recruitment of a minor for the purpose of his participation in a pornographic show, the obtaining of benefits from such a show in which minors participate or the exploitation of a minor in any other way for the performance of pornographic shows shall also be punished.

(1 ^ 2) The viewing of pornographic shows in which minors participate is punishable by imprisonment from **3 months to 3 years** or by a fine.

(2) If the acts set out in par. are perpetrated via a computer system or other means of data storage, it shall be punishable by no less than 2 and no more than 7 years of imprisonment.

(3) The act of accessing, without right, child pornography through computer systems or other means of electronic communication shall be punishable by no less than 3 months and no more than 3 years of imprisonment or by a fine.

(3 ^ 1) If the facts provided in par. (1), (1 ^ 1), (1 ^ 2) and (2) were committed in the following circumstances:

- a) by a family member;
- b) by a person in whose care, protection, education, guarding or treatment the minor is or by a person who has abused his or her recognized position of trust or authority over the minor;
- c) the deed endangered the life of the minor, the special limits of the punishments are increased by one third.

(4) Child pornography means any material that shows a minor displaying a sexually explicit behavior or that, even if not presenting a real person, simulate a minor with such behavior in a credible manner.

(4 ^ 1) A pornographic spectacle means the live exposure to an audience, including information and communication technology, of a child engaged in sexually explicit conduct or of a child's genitals for sexual purposes.

(5) The attempt shall be also punished.

No public reports on the subject were found with the occasion of the study.

Question 9: Can minors be punished for cyberbullying behaviour, without there being a physical component to the crime? This includes behaviours such as cyberstalking and cyber harassment. If criminal sanctions could apply, are minors prosecuted in practice?

Answer: Cyberbullying is not punishable by law in Romania, although, Art, 208 of the CC criminalizes **Harassment:**

(1) The act of an individual who repeatedly, with or without a legitimate interest, pursues an individual or supervises his/her domicile, working place or other places attended by the latter, thus causing to him/her a state of fear, shall be punishable by no less than 3 and no more than 6 months of imprisonment.

(2) Making of phone calls or communications through remote communication devices which, through their frequency or content, cause a state of fear to an individual, shall be punishable by no less than 1 and no more than 3 months of imprisonment or by a fine, unless such act represents a more serious offense. (3) A criminal action shall be initiated based on a prior complaint filed by the aggrieved party.

The range and types of punishment that may be imposed:

The Criminal Code regulates the system of sanctioning minors, being made up of educational measures that can be deprived or non-deprived of liberty. These remain at the discretion of the court in the situation of fulfilling certain conditions.

Article 115

Educational measures

(1) Educational measures are without or by imprisonment.

1. The educational measures without imprisonment are:

- a) civic traineeship;*
- b) supervision;*
- c) curfew on weekend;*
- d) assistance on a daily basis.*

2. The educational measures by imprisonment are:

- a) confinement in an educational centre;*
- b) confinement in a detention centre.*

(2) The educational measures to be taken against a juvenile shall be chosen in terms of Art. 114, according to the criteria stipulated in Art. 74.

The prescription period:

As per Art. 154 (e) of the CC, the prescription period is 3 years, when the penalty provided by the law for the offense perpetrated is a term of imprisonment not exceeding one year or a fine. As per Art. 131 of the CC, in case of persons who are underage at the date the offense is perpetrated, the criminal liability limitation terms provided under Art. 154 shall be reduced to half and shall be postponed or suspended as provided by law for persons of age.

Question 10: Can minors be punished for wilful misinformation or deception online (sharing false news, false information, pretending to be someone else, pretending to be an expert, etc.)? Which crimes/qualifications could possibly apply? If criminal sanctions could apply, are minors prosecuted in practice?

Answer: Minors can be punished for deceit, but only in the limitation of Art. 244 of the CC:

(1) Misleading another by presenting false facts as being true, or of true facts as being false, in order to obtain undue material gains for oneself or for another, and if material damages have been caused, shall be punishable by no less than 6 months and no more than 3 years of imprisonment.

(2) Deceit perpetrated by using false names or capacities or other fraudulent means shall be punishable by no less than 1 and no more than 5 years of imprisonment. If the fraudulent mean is in itself a offense, the rules for concurrence of offenses shall apply.

(3) Reconciliation removes criminal liability.

The range and types of punishment that may be imposed:

1. As per para 1 of the Art. 244 of the CC, the act, shall be punishable by no less than 6 months and no more than 3 years of imprisonment.
2. As per para 2 of the Art. 244 of the CC, the act shall be punishable by no less than 1 and no more than 5 years of imprisonment.

The prescription period:

1. As per Art. 154 (e) of the CC, the prescription period is 3 years, when the penalty provided by the law for the offense perpetrated is a term of imprisonment not exceeding one year or a fine. As per Art. 131 of the CC, in case of persons who are underage at the date the offense is perpetrated, the criminal liability limitation terms provided under Art. 154 shall be reduced to half and shall be postponed or suspended as provided by law for persons of age.
2. As per Art. 154 (d) of the CC, the prescription period is 5 years, when the penalty provided by the law for the offense perpetrated is a term of imprisonment exceeding one year, but no more than 5 years. As per Art. 131 of the CC, in case of persons who are underage at the date the offense is perpetrated, the criminal liability limitation terms provided under Art. 154 shall be reduced to half and shall be postponed or suspended as provided by law for persons of age.

Jurisdictional aspects in cross-border cases and applicable policy:

Law No. 302/2004 on international judicial cooperation in criminal matters, Title V, Art. 154 and Government Emergency Ordinance No. 103 of 13 December 2006 on the measures for facilitating the international police cooperation

Please provide case law to illustrate the application of the rules in practice

As the elements of “**unjust patrimonial benefit**” and “**if damage has been caused**” are essential for the crime to be committed, there is little chance for minors to be liable to commit this offence.

Question 11: Can minors be punished for online actions facilitating human trafficking? Typically this includes the selection and grooming of victims (e.g. lover boy phenomenon). If criminal sanctions could apply, are minors prosecuted in practice?

Answer: In Romania, minors are not punished for online actions facilitating human trafficking. As per *Art. 222 of the CC, Recruitment of minors for sexual purposes*, only individual of age are criminalized for such an offence.

In theory, minors can be punished for Human trafficking, as per Art. 210 of the CC, if they participate in the recruitment, transportation, transfer, harbouring or receipt of persons for exploitation purposes, but no information on specific cases was recorded.

Art. 210

Trafficking in human beings

(1) Recruitment, transportation, transfer, harbouring or receipt of persons for exploitation purposes:

a) by means of coercion, abduction, deception, or abuse of power;

b) by taking advantage of the inability of a person to defend him/herself or to express his/her will or of his/her blatant state of vulnerability;

c) by giving and receiving payments or other benefits in exchange for the consent of an individual having authority over such person, shall be punishable by no less than 3 and no more than 10 years of imprisonment and a ban on the exercise of certain rights.

(2) Trafficking in persons perpetrated by a public servant while fulfilling his/her professional duties and prerogatives shall be punishable by no less than 5 and no more than 12 years of imprisonment.

(3) The consent of an individual who is a victim of trafficking does not represent a justifying ground.

Question 12: Can minors be punished for acts of online piracy in your jurisdiction, i.e. the illegal use and/or distribution of content protected by intellectual property rights? Please focus on the elements of criminal nature. If criminal sanctions could apply, are minors prosecuted in practice?

Answer: Minors can't be punished for online piracy in Romania, as the Law No. 8 of 1996 on copyright and related rights (republished in 2018) does criminalize it.

Article 194

It is an offense and punishable by imprisonment from 6 months to 3 years or a fine for making available to the public, including the Internet or other computer networks, without the right, works or products bearing related rights or rights of manufacturers databases or their children, regardless of the medium, so that the public can access them at any place or at any time chosen individually.

Article 195

It is an offense and punishable by imprisonment from 6 months to 3 years or a fine for unauthorized reproduction on computer systems of computer programs in any of the following ways: installation, storage, running or execution, display or transmission in the internal network.

The range and types of punishment that may be imposed:

The Criminal Code regulates the system of sanctioning minors, being made up of educational measures that can be deprived or non-deprived of liberty. These remain at the discretion of the court in the situation of fulfilling certain conditions.

The prescription period

As per Art. 154 (e) of the CC, the prescription period is 3 years, when the penalty provided by the law for the offense perpetrated is a term of imprisonment not exceeding one year or a fine. As per Art. 131 of the CC, in case of persons who are underage at the date the offense is perpetrated, the criminal liability limitation terms provided under Art. 154 shall be reduced to half and shall be postponed or suspended as provided by law for persons of age.

No information on specific cases was identified.

Question 13: Can minors be punished for acts of hacking (i.e., unauthorized access to a computer system)? In particular, would this also apply to various scenarios exploiting vulnerabilities in IoT and connected devices? If criminal sanctions could apply, are minors prosecuted in practice?

Answer: Art. 360 of the CC criminalizes the illegal access to a computer system

Article 360

Illegal access to a computer system

(1) The access, without right, to a computer system shall be punishable by no less than 3 months and no more than 3 years of imprisonment or by a fine.

(2) The act set out in par. (1), perpetrated in order to obtain computer data, shall be punishable by no less than 6 months and no more than 5 years of imprisonment.

(3) If the act set out in par. (1) was perpetrated on a computer system to which, through processes, devices or specialized programs, access is restricted or prohibited for certain categories of users, it shall be punishable by no less than 2 and no more than 7 years of imprisonment.

The range and types of punishment that may be imposed:

The Criminal Code regulates the system of sanctioning minors, being made up of educational measures that can be deprived or non-deprived of liberty. These remain at the discretion of the court in the situation of fulfilling certain conditions.

The prescription period

As per Art. 154 (e) of the CC, the prescription period is 3 years, when the penalty provided by the law for the offense perpetrated is a term of imprisonment not exceeding one year or a fine. As per Art. 131 of the CC, in case of persons who are underage at the date the offense is perpetrated, the criminal liability

limitation terms provided under Art. 154 shall be reduced to half and shall be postponed or suspended as provided by law for persons of age.

Please provide case law to illustrate the application of the rules in practice.

<https://someseanul.ro/doi-minori-cercetati-pentru-infractiuni-informatice-au-topit-10-000-de-euro-pe-pariuri-si-poker-online/>

Please provide details on known issues of application.

Operation COLD LAKE

A Joint Investigation Team between Romanian, Estonian and Lithuanian Police uncovered a criminal network involved in fraud, phishing and money laundering against over 600 victims, in Sept. 2020.

<https://www.europol.europa.eu/newsroom/news/hook-line-and-sinker-cybercrime-network-phishing-bank-credentials-arrested-in-romania>

Operation SIM SWAP - targeted an OCG specialized in sim swapping attacks against celebrities led to the arrest of 4 suspects, after 15 home searches in Nov.2020.

<https://stirileprotv.ro/stiri/actualitate/vedete-victime-ale-unor-hackeri-le-au-spart-mailurile-si-au-luat-credite-la-banca-in-numele-lor.html>

Question 14: Can minors be punished for acts of using Cybercrime as a Service? If yes, under what qualification? In particular, how would this apply to using such services for exploiting vulnerabilities in IoT and connected devices e.g., the device of a friend or acquaintance? Does it matter if the intent is somewhat innocent (i.e., the minor thinks it's a joke or a prank)? If criminal sanctions could apply, are minors prosecuted in practice?

Answer: No, minors can't be punished for acts of using cybercrime as a Service. No information on cases or investigations was identified.

4. General questions regarding cross border cybercrime, international legal instruments applicable to fighting cybercrime and regarding international cooperation

Question 15: How does your country deal with the cross-border nature of many cybercrimes? When is jurisdiction established? Can judgements have extra-territorial effect?

Answer: Romania is a Party to the Council of Europe Convention on Cybercrime (CEST No 185, Budapest Convention) and the Additional Protocol on Xenophobia and Racism Committed through Computer System (CEST No 189) and on 12 May 2022 signed the Second Additional Protocol of the Convention. The national legal framework includes all the provisions with regards to online illegal activities and is largely compliant with the international standards.

When it comes to cross-border jurisdiction, Romania transposed into national legislation the European Union standards. More exactly, the Law No. 302/2004 on international judicial cooperation in criminal matters covers provisions and tools, such as Joint Investigation Teams, European Arrest Warrant, European Investigation Orders and many others.

Cooperation with foreign judicial authorities is facilitated by Eurojust.

Jurisdiction can be established based on criminal nationality, location where the offence was committed, residency of the victim, location where the crime produces effects, etc.

Romanian courts judgements have extra-territorial effect within European Union and abroad, based on signed international treaties in place.

Article 8 CC

Territoriality of criminal law

(1) Romanian criminal law applies to offenses committed on the territory of Romania.

(2) The territory of Romania is defined as the expanse of land, the territorial sea waters and inland waters, complete with the soil, sub-soil and airspace located inside the national borders.

(3) *A offense committed on the territory of Romania is defined as any offense committed on the territory defined at par. (2) or on a ship sailing under Romanian pavilion or on an aircraft registered in Romania.*

(4) *The offense is also considered as having been committed on the territory of Romania when on that territory or on a ship sailing under Romanian pavilion or on an aircraft registered in Romania an action was perpetrated with a view to perform, instigate or aid in the offense, or the results of the offense have been manifest, even if only in part.*

ART. 182, Law No. 302/2004 on international judicial cooperation in criminal matters

Joint investigation teams

(1) *Joint investigation teams may be set up and may operate in the territories of Romania and other states in order to facilitate the conduct of criminal investigations. The procedures governing the operation of these teams, as well as the composition, duration, location, organization, functions, purpose and conditions of participation of the members of a team in the investigative activities shall be established by written agreement. The national member of Eurojust or his deputy may participate in the activities of the joint investigation team.*

In relation to EU Member States and States Parties to the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the phasing out of Schengen border controls, the agreement shall be concluded by the Chief Prosecutor or the Public Prosecutor. The prosecutor who carries out or supervises the criminal investigation or, in case there is no criminal procedure in progress on the Romanian territory, regardless of the nature of the crime, the general prosecutor of the PICCJ or the prosecutor appointed by him. In relation to non-EU states, the agreement is concluded by the PICCJ's attorney general or by the prosecutor appointed by him.

(2) *A joint investigation team may be set up in particular when:*

(a) in an ongoing procedure in the requesting State, it is necessary to carry out difficult investigations involving significant human and other resources concerning both States;

b) several States shall carry out investigations which require coordinated and concerted action in the States concerned.

(3) *The request for the formation of a joint investigation team may be made by any State concerned. The team is formed in one of the states where the investigation is to be conducted.*

(4) *The request for the formation of a joint investigation team shall include proposals regarding the composition of the team.*

(5) *The members of the joint team appointed by the Romanian authorities have the quality of members, while those appointed by a foreign state have the quality of seconded members.*

(6) *The activity of the joint investigation team on the territory of the Romanian state is carried out according to the following general rules:*

a) the team leader is a representative of the competent Romanian judicial authority;

b) the actions of the team are carried out according to the Romanian law. Team members and seconded team members perform their duties under the responsibility of the person referred to in letter a).

7. *Members seconded to the Joint Investigation Team shall be empowered to be present at the performance of any procedural act, unless the team leader decides otherwise.*

(8) *When the activity of the joint investigation team is carried out on the territory of another state, if it is considered necessary to carry out some investigative acts on the Romanian territory, the prosecutor who is a member of the joint investigation team may request the Romanian authorities to perform those acts. without the other participating States submitting a request for judicial cooperation, unless a person is requested to be arrested for extradition or surrender, as the case may be. The procedures necessary to carry out the respective activity in Romania will be those applicable to the criminal investigation activities, according to the Romanian law.*

(9) *A member seconded to the Joint Investigation Team may, in accordance with its national law and within the limits of its powers, provide the team with the information available to the State which seconded it for the purpose of conducting criminal investigations by the team.*

10. *Information normally obtained by a member or seconded member of a Joint Investigation Team and not otherwise obtained by the competent authorities of the States concerned may be used for the following purposes:*

a) for the purpose for which the team was created;

b) to discover, investigate or prosecute other offenses, with the consent of the State in whose territory the information was obtained;

c) to prevent an imminent and serious danger to public security and in compliance with the provisions of letter b);

d) for other purposes, provided that this is agreed by the States which formed the team.

There is no specific impact on cybercrime committed by minors.

There are no issues of application, except lengthy duration of Mutual Legal Assistance. However, the European Investigation Order and 24/7 Cybercrime Contact Points under the Budapest Convention facilitate the cross-border investigations.

Question 16: What international legal instruments (bi-lateral, multi-lateral) apply in your country to the fight against (cross-border) cybercrime and how have they been implemented in national law (if implementation is necessary)?

Answer: Romania is a Party to the Council of Europe Convention on Cybercrime (CEST No 185, Budapest Convention) and the Additional Protocol on Xenophobia and Racism Committed through Computer System (CEST No 189) and on 12 May 2022 signed the Second Additional Protocol of the Convention. The national legal framework includes all the provisions with regards to online illegal activities and is largely compliant with the international standards.

Both substantive and procedural provisions of the Budapest Convention have corresponding provisions into the Criminal Code and Criminal Procedure Code of Romania.

Question 17: What forms of international cooperation exist in your country to the fight against cross-border cybercrime? Please describe different routes/options/procedures and the measures that can be requested (e.g., asking for investigative actions, exchange of information/evidence, etc.)?

Answer: When cooperating with the 66 Parties to the Budapest Convention as well as with the EU member states, Romanian authorities make use of all instruments available for international cooperation provided by the Cybercrime Convention.

- Production order (art. 18/ Art. 55, 56, 152, 170 of the CC)
- Search and seizure of stored computer data (art. 19/ Art. 168 of the CC)
- Real-time collection of traffic data (art. 20/ Art. 168 of the CC)
- Interception of content data (art. 21/ Art. 138, 139, 140, 141, 142, 143, 144, 145, 146 of the CC)
- Extradition (art. 24/ Art. 96 of the Law No. 302/2004 on international judicial cooperation in criminal matters)
- Spontaneous information (art. 26/ Art. 176 of the Law No. 302/2004 on international judicial cooperation in criminal matters and Art. 66 of the Law 161/2003)
- Expedited preservation of stored computer data (art. 29/ Law No. 302/2004 on international judicial cooperation in criminal matters and Law 161/2003)
- Expedited disclosure of preserved traffic data (art. 30/ Law No. 302/2004 on international judicial cooperation in criminal matters and Law 161/2003)
- Mutual assistance regarding accessing of stored computer data (art. 31/ Law No. 302/2004 on international judicial cooperation in criminal matters and Law 161/2003, Chapter V)
- Trans-border access to stored computer data with consent or where publicly available (art. 32/ Law 161/2003)
- Mutual assistance regarding the real-time collection of traffic data (art. 33/ Art. 60 of the Law 161/2003 and Law No. 302/2004 on international judicial cooperation in criminal matters)
- Mutual assistance regarding the interception of content data (art. 34/ Art. 60 of the Law 161/2003 and Art. 184 of the Law No. 302/2004 on international judicial cooperation in criminal matters)
- 24/7 Network (art.35)

In relation to other countries (not Parties to the Convention) the rules and provisions of specific bi-lateral treaties are applied, which may vary from country to country.

Question 18: Do the rules (national, international) and policies mentioned in your answers in this section have any particular effect or impact on cybercrime committed by minors?

Answer: National and international laws and policies are applied in a fair and adapted way by national authorities, whenever dealing with a cybercrime case committed by a minor. As a rule, they have an educational, preventive and coercive impact.

5. Other

Question 19: Do you have any information on the rates/statistics of cybercrime in your country and their recent evolution? Of particular interest would be statistics related specifically to the crimes covered in this questionnaire and statistics on cybercrime by minors (ideally also specifically for the crimes covered above)? If there were any (relatively) recent legislative or policy changes, please try to find statistical information on how this has impacted the incidence of cybercrime in practice, and in particular cybercrime by minors.

Answer: While statistics related to other types of crime are publicly available, no data is accessible in relation to the crimes covered by this questionnaire (cybercrime committed by minors). There have been no recent legislative changes, except the signature of 2nd Additional protocol to the Cybercrime Convention, on 12 May 2022.

Question 20: Do you have any other comments to make that may be relevant to your jurisdiction?

Answer: n/a